



CITY OF MOUNTAIN VIEW

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May 12, 2004

Liane Randolph, Chair
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

VIA E-MAIL AND FAX

Re: Proposed Regulatory Action to Address General Plan Decisions Scheduled for Your
May 13, 2004 Meeting

Honorable Commission:

The FPPC Committee of the League of California Cities, City Attorney's Division has reviewed the above-referenced proposal. On their behalf I apologize for the lateness of this submittal.

The Committee, as well as the larger group of city attorneys throughout California, has watched this issue unfold over the past year. Governmental decision-making within the context of general plans and our obligations under the Political Reform Act can be challenging. If it is a "problem", it seems to be a problem without an easy fix. Any proposed solution must be evaluated within the overall context of the Political Reform Act and whether or not the solution follows a logical path consistent with other parameters of the Act.

Factually, we in cities may see general plan decision-making differently than our county peers. For example, if a general plan decision is before a city council to decide whether agricultural land should be redesignated as residential, and the proposed change is approved, the landowners have just won the lottery. In most cities, zoning is required by law to be consistent with the general plan and therefore if the general plan is changed to designate agricultural properties as residential, by law, a zone change would have to follow. If a councilmember owned agricultural land and voted for the general plan change, that owner would not have to vote on the zoning change to have participated in a governmental decision that affected his/her economic interest in a material way.

Step Four: 18704.2

I understand from the staff report that the proposed change to Step 4 of the standard analysis would only reclassify the involvement of the economic interest from direct to indirect and thus change the presumption to the rebuttable presumption of "no conflict" associated with the indirectly involved economic interests. The government official would still have to continue with the standard analysis to determine whether or not the

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presumption could be rebutted. If this is clear, I believe there will remain consistent logic between the parts of the whole. It may also render the new change relatively insignificant from the standpoint that only very preliminary decisions which may ultimately affect the general plan (e.g., whether or not to hire a consultant to conduct a planning study to determine appropriate land uses) would allow participation by an official who would not be able to participate in a decision to actually change a general plan (e.g., the general plan map) affecting one of their economic interest(s).

New Definition [(18704.2(c))]

We have some concern that the listing of qualifying actions in subsection (c)(1) may be more expansive than intended. For example, if the goal is to include "maps, diagrams, and texts" for the purpose of referring to a governmental decision which would affect the entire general plan map, recognize that a general plan map change could affect as little as one parcel of property. Therefore, the list, by including "maps", could be seen as more expansive than intended.

Step Seven

With respect to the proposed change to Step 7, the public generally exception, it looks like this moves too far afield from the logic of the current regulatory scheme. The idea that it is crucial for people who live in an area to be represented in the process is understandable, however, it is not necessarily consistent with the Political Reform Act for them to be represented by someone with an economic stake in the outcome of a decision. When this country was founded a person had to have an economic interest (e.g., property ownership) to hold office and/or to vote. We have flipped that notion on its head through legislation aimed at preserving the integrity of our governmental institutions. Now, those who serve must be financially disinterested in the outcome in order to participate. Therefore, any change that would upset the statutory approach created by the Political Reform Act should be made to the Act and not via regulations. In addition, while possible, it is difficult to circumvent the express wording of the Act which requires that the impact of the decision be indistinguishable from the effect on the public generally.

I hope this is helpful as you pursue this inquiry. I will be present at the Commission hearing on the 13th to answer any questions the Commission may have.

Sincerely,



Michael D. Martello
City Attorney

cc: JoAnne Speers, FPPC Committee, Michael Colantuono